

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, April 23, 2003

USE OF NEW CONSTRUCTION GRANTS

PURPOSE OF REPORT

To amend the regulations regarding the use of new construction grants ("Use of Grants") for School Facility Program (SFP) projects.

BACKGROUND

Since early 2001, the State Allocation Board (SAB) has expressed serious concerns with requests for "Use of Grants" under provisions of the SFP Regulations, which led to amendments to the "Use of Grants" regulation in March 2001. After sufficient time elapsed to observe the results of the 2001 amendments, the SAB again raised concerns in June 2002 regarding the following:

Increased frequency of "Use of Grants" requests.

Over 47,000 pupils, or in excess of \$307 million in the State's share for the base grant amounts, not utilized to construct additional classroom facilities. (Currently these figures are in excess of 50,100 pupils, or in excess of \$330 million in the State's share for the base grant amounts.)

Implementation of multi-track year-round education used as a method of housing displaced students.

Excessive district loading standards per classroom as a means to house displaced students.

After discussion at several SAB Implementation Committee meetings, proposed emergency regulations were presented to the SAB at its January 2003 meeting. The SAB delayed action in January on adopting any long-term "Use of Grants" regulations and approved provisions for those districts that had planned projects if certain criteria are met as follows:

The project plans were accepted by the Division of the State Architect (DSA) on or prior to January 22, 2003.

The project does not exceed 135 percent of the capacity of the project.

The district does not utilize multi-track year-round education as a method to house its pupils used for the grant.

At its January 2003 meeting, the Board also requested staff to return the "Use of Grants" item to the SAB Implementation Committee for further discussion.

REGULATIONS

In December 1999, the SAB adopted Regulation Section 1859.77.2 allowing a district to receive new construction grants that exceed the capacity of a project and to use grant eligibility at a grade level other than the proposed project. Approval of such items will be handled on a case-by-case basis. In March 2001, the SAB amended these regulations for projects with plans and specifications accepted by the DSA after April 30, 2001.

STAFF COMMENTS

Staff discussed the "Use of Grants" at the March and April 2003 SAB Implementation Committee meetings, which resulted in several modifications that address SAB concerns and provide more flexibility for the districts than the January 2003 proposal. In alignment with those revisions, the OPSC recommends that a district may request "Use of Grants" as follows:

1. A district may request grant eligibility determined at a grade level other than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in number two below.

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## STAFF COMMENTS (cont.)

2. A district may request new construction grants that exceed the capacity of the project when the project includes no more than eight classrooms and is to construct a multipurpose, gymnasium and/or library at an existing site that does not have an existing or adequate facility of the type being requested. Inadequate facilities are defined as being less than 60 percent of the area needed, as specified in the SFP Regulations. Districts are ineligible for these grants if the school, where the addition is proposed, had been built as a new school under the SFP. The amount of the excess pupil grants requested are limited to no more than the pupils commensurate to the grants necessary to construct the size multipurpose, gymnasium and/or library needed, as defined in the SFP Regulations.
3. Beyond the "grandfathering" provision approved by the SAB for projects with plans accepted by the DSA prior to January 23, 2003, staff recommends provisions to permit "Use of Grants" for excess pupil grants where language was included in the local bond that specifically identified the project planned by the district and was based on the "Use of Grants" Regulation Sections 1859.77.2 or 1859.77.3 in place at that time of the bond election.
4. Acceptable housing plans have been defined in the proposed regulations that address the Board's concerns yet provide parameters and some flexibility for the districts. Staff recommends that the required resolution and housing plan be discussed and approved at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing. Staff also recommends that the regulations be amended to permit the districts to certify compliance and that these documents be available upon the OPSC project audit.

The OPSC presented information at the SAB Implementation Committee meetings which it believes supports the contention that the "Use of Grants" regulations are inadequate and lead to inappropriate apportionments, large numbers of inadequately housed students, and funding of projects not contemplated by the SAB or the law. Staff believes that the seriousness of the issue warrants immediate, emergency regulation change in order to stop the current regulations from adversely affecting the next funding made available through Proposition 47. Therefore, the OPSC recommends that the SAB adopt the attached regulations on an emergency basis, as they are necessary for the immediate preservation of the public peace, health and safety, or general welfare.

The regulations, as amended in January 2003, address projects accepted by the DSA on or before January 22, 2003. Staff is also concerned that provisions be put in place for districts with projects that submitted its plans to the DSA after January 22, 2003.

## RECOMMENDATIONS

1. Amend Section 1859.77.2 as shown on Attachment A.
2. Adopt Section 1859.77.3 as shown on Attachment A.
3. Amend the *Application for Funding*, Form SAB 50-04 (Rev. 02/03), as shown on Attachment B and begin the regulatory process.
4. Authorize the OPSC to file these proposed new and amended regulations on an emergency basis for the reasons stated above and begin the regulatory process with the Office of Administrative Law.

**ATTACHMENT A**  
Proposed Regulatory Amendments  
Use of New Construction Grants  
State Allocation Board Meeting, April 23, 2003

Amend Section 1859.77.2 as follows:

Section 1859.77.2. Use of New Construction Grant Funds for Projects Accepted by the DSA on or before January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213; and for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a labor compliance program pursuant to Labor Code Section 1771.7.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA on or before January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that do not to exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the grant requests above 100 percent of the number of pupils to be housed do not include eligibility based on Special Day Class pupils and if the district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the Application filing that includes the following:
  - (1) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81. The plan shall not utilize Multi-track Year Round Education schedules for the purposes of housing excess pupils.
  - (2) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
  - (3) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
- (b) A district may request utilize new construction grant eligibility determined at a different grade level than the proposed project that do not exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations subject to all the following:
  - (1) The district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the Application filing that includes the following:
    - (A) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81. The plan shall not utilize Multi-track Year Round Education schedules for the purposes of housing excess pupils.
    - (B) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (C) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
  - (2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and ~~the district must use its New Construction Grant eligibility, pursuant to subsections (b) and (d), in the following order:~~
    - (A) At the grade level of the proposed project.
    - (B) At the lowest grade level other than the proposed project.
    - (C) At the next highest grade level other than the proposed project.

(c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its Use of Grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.

Adopt Section 1859.77.3 as follows:

Section 1859.77.3. Use of New Construction Grant Funds for Projects Accepted by the DSA after January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213; and for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a labor compliance program pursuant to Labor Code Section 1771.7.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium and/or library at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:
  - (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
    - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
      - (1) The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
      - (2) The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.
  - (2) The existing school site was not constructed under the SFP.
  - (3) The proposed project includes no more than eight classrooms.
  - (4) Grant requests, above 100 percent of the number of pupils to be housed, based on Special Day Class pupil eligibility are only permitted under this subsection (a) when building a Special Day Class facility.

- (5) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b).
- (6) The maximum excess pupil amount being requested for this type of Use of Grants request, is calculated by the following:
- (A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b).
  - (B) Multiply the product in (1)(A) above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b).
  - (C) Divide the product in (1)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.
- (b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in Section 1859.77.3(a), based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations when all of the following is met:
- (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
    - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
      1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
      2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or
      3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.
  - (2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsection (b), in the following order:
    - (A) At the grade level of the proposed project, if available.
    - (B) At the lowest grade level other than the proposed project, if available.
    - (C) At the next highest grade level other than the proposed project.
  - (c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.3 in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its Use of Grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.